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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **SEATTLE DIVISION**

9
10 **BRIAN MOORE, an individual,**

Case No.: 2:24-cv-0595

11 **PLAINTIFF,**

12
13 **COMPLAINT**

v.

14 **JR EQUITIES AND INVESTMENTS, LLC,**
15 **a limited liability company,**

16 **DEFENDANT.**

17
18 **COMPLAINT**

19 Plaintiff Brian Moore (“Moore” or “Plaintiff”) hereby sues Defendant, JR EQUITIES
20 AND INVESTMENTS, LLC, a limited liability company, (hereinafter “Defendant”) pursuant to
21 the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* (“ADA”), and its implementing
22 regulations, the ADA’s Accessibility Guidelines, 28 C.F.R. Part 36 (“ADAAG”) and alleges as
23 follows:

24
25 **PRELIMINARY STATEMENT**

26 1. Though not required by the ADA, Plaintiff attempted to resolve this matter prior
27 to filing the present complaint but was unable to do so.
28

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2. Defendant's ADA violations create real and significant barriers to entry for disabled persons such as Plaintiff. Pursuant to Title III of the ADA, Plaintiff seeks declaratory and injunctive relief requiring Defendant to (1) remedy the violations identified herein and (2) enact and adhere to a policy that ensures the proper maintenance of the property to avoid future ADA violations.

JURISDICTION AND PARTIES

3. This is an action for declaratory and injunctive relief pursuant to Title III of the ADA. This Court is vested with original jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1343 for Plaintiff's claims pursuant to 42 U.S.C. § 12181 *et seq.*, based upon Defendant's, failure to remove physical barriers to access and violations of Title III of the ADA.

4. Venue is properly located in the WESTERN DISTRICT OF WASHINGTON IN THE SEATTLE DIVISION pursuant to 28 U.S.C. § 1391(b) because venue lies in the judicial district of the property situs or the judicial district in which a substantial part of the events or omissions giving rise to Plaintiff's claims occurred. The Defendant's property is located in and does business within this judicial district and all events giving rise to this lawsuit occurred in this judicial district.

5. Plaintiff, Brian Moore, is and has been at all times relevant to the instant matter, a natural person residing in Washington and is sui juris.

6. Plaintiff is an individual with disabilities as defined by the ADA.

7. Plaintiff is substantially limited in performing one or more major life activities, including but not limited to: walking and standing.

8. Plaintiff uses a wheelchair for mobility purposes.

1 9. Plaintiff is also an independent advocate of the rights of similarly situated disabled
 2 persons and is a “tester” for the purpose of enforcing Plaintiff’s civil rights, monitoring,
 3 determining and ensuring whether places of public accommodation are in compliance with the
 4 ADA. Plaintiff’s motivation to return to a location, in part, stems from a desire to utilize ADA
 5 litigation to make his home community more accessible for Plaintiff and others; and pledges to do
 6 whatever is necessary to create the requisite standing to confer jurisdiction upon this Court so an
 7 injunction can be issued correcting the numerous ADA violations on the Subject Property,
 8 including returning to the Subject Property as soon as it is accessible (“Advocacy Purposes”).
 9

10 10. Defendant is a limited liability company conducting business in the State of
 11 Washington and within this judicial district.
 12

FACTUAL ALLEGATIONS

13 11. On or about August of 2022, Plaintiff attempted to but was deterred from
 14 patronizing and/or gaining equal access as a disabled patron to the Honest Jack's Auto Parts
 15 located at 7269 Rainier Ave, Seattle, WA 98118 (“Subject Facility”, “Subject Property”).
 16

17 12. Defendant is the owner, lessor, and/or operator/lessee of the real property and
 18 improvements that are the subject of this action, specifically the Honest Jack's Auto Parts and its
 19 attendant facilities, including vehicular parking and common exterior paths of travel within the
 20 site identified by the King County Assessor parcel identification number 110800-0415 (“Subject
 21 Facility”, “Subject Property”).
 22

23 13. Plaintiff lives within thirty (30) miles of the Subject Property. Because the Subject
 24 Property is located on Rainier Ave, a King County thoroughfare that he frequents routinely, he is
 25 routinely where the Subject Property is located and travels in and about the immediate area of the
 26 Subject Property numerous times every month, if not every week.
 27

28 COMPLAINT - 3

1 14. Plaintiff's access to the Subject Property and/or full and equal enjoyment of the
2 goods, services, facilities, privileges, advantages and/or accommodations offered therein were
3 denied and/or limited because of his disabilities, and he will be denied and/or limited in the future
4 unless and until Defendant is compelled to remove the physical barriers to access and correct the
5 ADA violations that exist at the Subject Property, including those set forth in this Complaint.
6

7 15. Plaintiff has visited, i.e. attempted to patronize, the Subject Property on multiple
8 prior occasions, and at least once before as a patron and advocate for the disabled. Plaintiff intends
9 on revisiting the Subject Property within six months of the filing of this Complaint or sooner, as
10 soon as the barriers to access detailed in this Complaint are removed. The purpose of the revisit is
11 to be a regular patron to determine if and when the Subject Property is made accessible, and to
12 maintain standing for this lawsuit for Advocacy Purposes.
13

14 16. Plaintiff intends on revisiting the Subject Property to enjoy the same experiences,
15 goods, and services available to Defendant's non-disabled patron as well as for Advocacy
16 Purposes, but does not intend to continue to repeatedly re-expose himself to the ongoing barriers
17 to equal access and engage in the futile gesture of attempting to patronize the Subject Property, a
18 business of public accommodation known to Plaintiff to have numerous and continuing barriers to
19 equal access for wheelchair users.
20

21 17. Plaintiff recently traveled to the Subject Property as a patron and as an independent
22 advocate for the disabled, encountered and/or observed the barriers to access that are detailed in
23 this Complaint, engaged those barriers where physically possible, suffered legal harm and legal
24 injury, and will continue to suffer such harm and injury as a result of the illegal barriers to equal
25 access present at the Subject Property.
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28 COMPLAINT - 4

18. Plaintiff has a fundamental right as established under the ADA to patronize any place of public accommodation as any person who is not disabled has.

19. Plaintiff's day-to-day life has been negatively affected by the barriers to entry at the Subject Property, as his fundamental right to patronize any place of public accommodation at his choosing has been diminished by Defendant's non-compliance with the ADA.

20. Plaintiff has no obligation to only patronize places of public accommodation that are ADA compliant.

21. If barriers to entry are not removed at the Subject Property, it will place undue hardship, cause Plaintiff loss of opportunity, and unduly force Plaintiff to “search” for a place of public accommodation to patronize that is ADA compliant.

COUNT I – CLAIM FOR INJUNCTIVE RELIEF
(Against Defendant for ADA Violations)

22. The effective date of Title III of the ADA was January 26, 1992 (or January 26, 1993, if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181; 28 C.F.R. § 36.508(a).

23. The Subject Property is a public accommodation and service establishment.

24. Pursuant to the mandates of 42 U.S.C. § 12134(a), on July 26, 1991, the Department of Justice and Office of Attorney General promulgated federal regulations to implement the requirements of the ADA. 28 C.F.R. Part 36.

25. Public accommodations were required to conform to these regulations by January 26, 1992 (or by January 26, 1993, if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181 *et seq.*; 28 C.F.R. § 36.508(a).

26. The Subject Property must be, but is not, in compliance with the ADA and the

ADAAG.

1 27. Plaintiff has attempted to, and has to the extent possible, accessed the Subject
2 Property in his capacity as a patron at the Subject Property and as an independent advocate for
3 the disabled, but could not fully do so because of his disabilities resulting from the physical
4 barriers to access, dangerous conditions and ADA violations that exist at the Subject Property
5 that preclude and/or limit his access to the Subject Property and/or the goods, services, facilities,
6 privileges, advantages and/or accommodations offered therein, including those barriers,
7 conditions and ADA violations more specifically set forth in this Complaint.

8 28. Plaintiff intends to visit the Subject Property again in the very near future as a
9 patron and as an independent advocate for the disabled, in order to utilize all of the goods, services,
10 facilities, privileges, advantages and/or accommodations commonly offered to able-bodied
11 patrons of the Subject Property but will be unable to fully do so because of his disability and the
12 physical barriers to access, dangerous conditions and ADA violations that exist at the Subject
13 Property that preclude and/or limit his access to the Subject Property and/or the goods, services,
14 facilities, privileges, advantages and/or accommodations offered therein, including those barriers,
15 conditions and ADA violations more specifically set forth in this Complaint.

16 29. Defendant has discriminated against Plaintiff (and others with disabilities) by
17 denying his access to, and full and equal enjoyment of the goods, services, facilities, privileges,
18 advantages and/or accommodations of the Subject Property, as prohibited by, and by failing to
19 remove architectural barriers as required by, 42 U.S.C. § 12182(b)(2)(A)(iv).

20 30. Defendant will continue to discriminate against Plaintiff and others with disabilities
21 unless and until is compelled to remove all physical barriers that exist at the Subject Property,
22 including those specifically set forth herein, and make the Subject Property accessible to and
23 usable by Plaintiff and other persons with disabilities.

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31. A specific list of unlawful physical barriers, dangerous conditions and ADA violations which Plaintiff experienced and/or observed that precluded and/or limited Plaintiff's access to the Subject Property and the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the Subject Property include, but are not limited to:

ACCESSIBLE ROUTES/PARKING (Exterior)

- a. There are no designated accessible parking spaces present in the parking facility servicing the Subject Property in violation of Section 4.1 and 4.6 of the 1991 ADAAG and Section 208 and 208.2 of the 2010 ADAAG. These violations made it dangerous for Plaintiff to utilize the parking facility at the Subject Property and caused Plaintiff loss of opportunity.
- b. There is no van-accessible parking present in violation of Section 4.6 of the 1991 ADAAG and Section 502 of the 2010 ADAAG. These violations made it dangerous for Plaintiff to utilize the parking facility at the Subject Property and caused Plaintiff loss of opportunity.
- c. There are no access aisles serving the parking spaces closest to the entrance in violation of Section 4.6 of the 1991 ADAAG and Sections 208 and 502 of the 2010 ADAAG. These violations made it dangerous for Plaintiff to utilize the parking facility at the Subject Property and caused Plaintiff loss of opportunity.
- d. There is no van-accessible parking identified as such with upright “Van Accessible” signage in violation of Section 4.6.4 of the 1991 ADAAG and Section 502.6 of the 2010 ADAAG. These violations made it dangerous for Plaintiff to utilize the parking facility at the Subject Property and caused Plaintiff loss of opportunity.

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- 1 e. There is no visible upright signage (displaying the International
2 Symbol of Accessibility) designating parking spaces as
3 accessible in violation of Section 4.6.4 of the 1991 ADAAG and
4 Section 502.6 of the 2010 ADAAG. These violations made it
dangerous for Plaintiff to utilize the parking facility at the
Subject Property and caused Plaintiff loss of opportunity.
- 5
- 6 f. The paint delineating the parking spaces closest to the entrance
7 is not being maintained so that it clearly marks the accessible
8 parking location in violation of 28 CFR § 36.211, Section 4.6 of
9 the 1991 ADAAG, and Section 502.3.3 of the 2010 ADAAG.
10 These violations made it dangerous for Plaintiff to utilize the
parking facility at the Subject Property and caused Plaintiff loss
of opportunity.
- 11
- 12 g. There is broken, cracked, and unlevel pavement within the
13 purported accessible route from the entrance of the subject
14 facility to the parking facility in violation of Section 4.3.2 and
15 4.5 of the 1991 ADAAG and Sections 206.2.1, 302, 402, and
16 403 of the 2010 ADAAG. These violations made it dangerous
for Plaintiff to utilize the parking facility at the Subject Property
and caused Plaintiff loss of opportunity.
- 17
- 18 h. The paved area immediately outside the purported accessible
19 entrance door has an uneven inclined approach that extends into
20 the minimum level maneuvering clearance required for a
wheelchair user to approach and access each entrance's outward
21 swinging entry door in violation of Section 4.13.6 of the 1991
ADAAG and Section 404.2.4.1 of the 2010 ADAAG. These
22 violations made it dangerous for Plaintiff to utilize the parking
facility at the Subject Property and caused Plaintiff loss of
opportunity.
- 23

24 (Interior)

- 25 i. The plaintiff could not traverse the aisles within the store with
26 the same access as the Defendant's able-bodied customers due
27 to noncompliant clear widths within the aisles caused by
28 merchandise positioned within the interior paths of travel. The

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1 interior accessible routes between the shopping floor interior
2 aisle(s) and the shopping floor perimeter aisles fail to meet the
3 minimum maneuverability clearance requirements for
4 accessible routes in violation of 28 CFR § 36.211, Section 4.3.3
5 of the 1991 ADAAG, and Section 403.5 of the 2010 ADAAG.
6 These violations made it dangerous for Plaintiff to patronize the
7 Subject Property and caused Plaintiff loss of opportunity.

8

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j. The sales counter is too high for wheelchair users. Violation:
The sales counter exceeds the maximum allowable height of 36
inches from the finish floor in violation of Section 7.2 of the
1991 ADAAG and Sections 227.3 and 904.4 of the 2010
ADAAG. These violations made it dangerous for Plaintiff to
patronize the Subject Property and caused Plaintiff loss of
opportunity.

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MAINTENANCE PRACTICES

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a. Defendant has a practice of failing to maintain the accessible
features of the facility, creating barriers to access for the
Plaintiff, as set forth herein, in violation of 28 CFR § 36.211.
This practice prevented access to the plaintiff equal to that of
Defendant's able-bodied customers causing Plaintiff loss of
opportunity.

18

19

b. Defendant has a practice of failing to maintain the accessible
elements at the Subject Facility by neglecting their continuing
duty to review, inspect, and discover transient accessible
elements which by the nature of their design or placement,
frequency of usage, exposure to weather and/or other factors, are
prone to shift from compliant to noncompliant so that said
elements may be discovered and remediated.

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c. Defendant has failed and continues to fail to alter their
inadequate maintenance practices to prevent future recurrence
of noncompliance with dynamic accessible elements at the
Subject Facility in violation of 28 CFR § 36.211, the 1991
ADAAG, and the 2010 ADAAG. These violations, as set forth
hereinabove, made it impossible for Plaintiff to experience the

1 same access to the goods, services, facilities, privileges,
2 advantages and accommodations of the Subject Facility as
3 Defendant's able-bodied patrons and caused Plaintiff loss of
opportunity.

4

5 d. Defendant has failed to modify their discriminatory maintenance
6 practices to ensure that, pursuant to their continuing duty under
7 the ADA, the Subject Property remains readily accessible to and
8 usable by disabled individuals, including Plaintiff, as set forth
9 herein, in violation of 28 CFR § 36.302 and 36.211. This failure
10 by Defendant prevented access to the plaintiff equal to that of
Defendant's able-bodied customers causing Plaintiff loss of
opportunity.

11 32. The discriminatory violations described above are not an exhaustive list of the
12 Defendant's current barriers to equal access and violations of the ADA because Plaintiff was
13 unable to access and assess all areas of the subject premises due to the architectural barriers
14 encountered. A complete list of the subject location's ADA violations affecting the Plaintiff as a
15 wheelchair user, and the remedial measures necessary to remove same, will require an on-site
16 inspection by Plaintiff's representatives pursuant to Federal Rule of Civil Procedure 34. Once the
17 Plaintiff personally encounters discrimination, as alleged above, or learns of discriminatory
18 violations through expert findings or personal observation, Plaintiff has actual notice that the
19 Defendant does not intend to comply with the ADA.
20

21 33. The Defendant has a practice of failing to maintain the accessible elements at the
22 Subject Property by neglecting their continuing duty to review, inspect, and discover transient
23 accessible elements which by the nature of its design or placement, frequency of usage, exposure
24 to weather and/or other factors, are prone to shift from compliant to noncompliant, so that said
25 elements are discovered and remediated. Defendant has failed and continue to fail to alter their
26 inadequate maintenance practices to prevent future recurrence of noncompliance with dynamic
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1 accessible elements at the Subject Property in violation of 28 CFR §§ 36.202 and 36.211. These
2 violations, as referenced hereinabove, made it impossible for Plaintiff, as a wheelchair user, to
3 experience the same access to the goods, services, facilities, privileges, advantages and
4 accommodations of the Subject Property as Defendant's able-bodied patrons.
5

6 34. Accessible elements at the Subject Property have been altered and/or constructed
7 since 2010.

8 35. The foregoing violations are violations of the 1991 ADAAG, and the 2010 ADAAG,
9 as adopted by the U.S. Department of Justice. In instances where the 2010 ADAAG standards do
10 not apply, the 1991 ADAAG standards apply, and all of the alleged violations set forth herein can
11 be modified to comply with the 1991 ADAAG standards.
12

13 36. The removal of the physical barriers, dangerous conditions and ADA violations
14 alleged herein is readily achievable and can be accomplished and carried out without significant
15 difficulty or expense. 42 U.S.C. § 12182(b)(2)(A)(iv); 42 U.S.C. § 12181(9); 28 C.F.R. § 36.304.

16 37. Each of the violations alleged herein is readily achievable to modify to bring the
17 Subject Property into compliance with the ADA.
18

19 38. Removal of the physical barriers and dangerous conditions present at the Subject
20 Property is readily achievable because of the site conditions at the Subject Property, the structural
21 design of the subject facility, and the straightforward nature of the necessary modifications.
22

23 39. To assist businesses in offsetting the costs associated with complying with the ADA
24 and removing barriers to access for individuals with disabilities, Section 44 of the IRS Code
25 provides a tax credit for small business owners, and Section 190 of the IRS Code provides a tax
26 deduction for all business owners, including the Defendant.

27 40. Removal of the physical barriers and dangerous conditions at the Subject Property
28

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1 is readily achievable because of the relative low cost of the necessary modifications and the
 2 Defendant has the financial resources to make the modifications, including the financial assistance
 3 made available to Defendant by the government pursuant to Section 44 and/or Section 190 of the
 4 IRS Code.

6 41. By continuing to maintain and/or operate the Subject Property with discriminatory
 7 conditions in violation of the ADA, Defendant contributes to Plaintiff's sense of isolation and
 8 segregation and deprive Plaintiff of the full and equal enjoyment of the goods, services, facilities,
 9 privileges, and accommodations available to able bodied individuals of the general public.

10 42. Defendant is required to remove the existing architectural barriers to the physically
 11 disabled when such removal is readily achievable for their places of public accommodation that
 12 have existed prior to January 26, 1992, 28 CFR 36.304(a); additionally, if there has been an
 13 alteration to Defendant's place of public accommodation since January 26, 1992, then Defendant
 14 is required to ensure to the maximum extent feasible, that the altered portions of the facility are
 15 readily accessible to and usable by individuals with disabilities, including people who use
 16 wheelchairs, 28 CFR 36.402; and finally, if the Defendant's facilities were designed and
 17 constructed for first occupancy subsequent to January 26, 1993, as defined in 28 CFR 36.401, then
 18 the Defendant's facilities must be readily accessible to and useable by individuals with disabilities
 19 as defined by the ADA. To date, Defendant has failed to comply with this mandate.

20 43. Plaintiff is without adequate remedy at law and is suffering irreparable harm and
 21 reasonably anticipates that he will continue to suffer irreparable harm unless and until Defendant
 22 is required to remove the physical barriers, dangerous conditions and ADA violations that exist at
 23 the Subject Property, including those alleged herein. Considering the balance of hardships between
 24 the Plaintiff and Defendant, a remedy in equity is warranted.

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28 COMPLAINT - 12

1 44. Plaintiff's requested relief serves the public interest.

2 45. Plaintiff's counsel is entitled to recover his reasonable attorneys' fees and costs of
3 litigation from Defendant pursuant to 42 U.S.C. §§ 12188, 12205 and 28 CFR 36.505. Plaintiff
4 will be denied full and equal access to the subject premises, as provided by the ADA unless the
5 injunctive relief requested herein is granted.

6 46. Pursuant to 42 U.S.C. § 12188, this Court is vested with the authority to grant
7 Plaintiff injunctive relief; including an Order to alter the subject facilities to make them readily
8 accessible to, and useable by, individuals with disabilities to the extent required by the ADA, and
9 closing the subject facilities until the requisite modifications are completed, and ordering
10 Defendant to fulfill their continuing duty to maintain the accessible features at the premises in the
11 future as mandated by 28 CFR 36.211.

12 WHEREFORE, the Plaintiff prays as follows:

13 A. That the Court find Defendant in violation of the ADA and
14 ADAAG;

15 B. That the Court enter an Order requiring Defendant to (i) remove the
16 physical barriers to access and (ii) alter the Subject Property to make
17 the Subject Property readily accessible to and useable by individuals
18 with disabilities to the full extent required by Title III of the ADA;

19 C. That the Court enter an Order directing Defendant, pursuant to 28
20 C.F.R. §36.211, to fulfill their continuing duty to maintain their
21 accessible features and equipment so that the facility remains
22 accessible to and useable by individuals with disabilities to the full
23 extent required by Title III of the ADA;

24 D. That the Court enter an Order directing Defendant to implement and
25 carry out effective policies, practices, and procedures to maintain
26 the accessible features and equipment pursuant to 28 C.F.R. §36.302
27 and 28 C.F.R. §36.211;

28 E. That the Court enter an Order directing Defendant to evaluate and
 neutralize their policies and procedures towards persons with

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disabilities for such reasonable time so as to allow them to undertake and complete corrective procedures;

- F. An award of attorneys' fees, costs (including expert fees), and litigation expenses pursuant to 42 U.S.C. § 12205 and an award of monitoring fees associated with insuring that the Defendant is in compliance with the ADA;
- G. An award of interest upon the original sums of said award of attorneys' fees, costs (including expert fees), and other expenses of suit; and
- H. Such other relief as the Court deems just and proper, and/or is allowable under Title III of the Americans with Disabilities Act.

Dated: April 30, 2024.

Respectfully submitted,

By: /s/ David S. Foster
David S. Foster
Counsel for Plaintiff
WSBA No.: 39909
Telephone: 503-927-6440
Email: dsfoster69@gmail.com

DEFENDANT TO BE SERVED:

JR EQUITIES AND INVESTMENTS, LLC
c/o John Eastey
7269 Rainier Avenue South
Seattle, WA 98118

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The Law Office of David S. Foster P.C.
3353 SE Raymond Street
Portland, OR 97202
(503) 927-6440